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No. 111

IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

DEPARTMENT OF MENTAL HYGIENE OF THE
STATE OF CALIFORNIA,

Appellant,

vs.

EVELYN KIRCHNER, ADMINISTRATRIX OF THE
ESTATE OF ELLINOR GREEN VANCE,

Appellee.

**AMICUS CURIAE BRIEF OF THE STATE OF OHIO.
IN SUPPORT OF THE BRIEF OF THE DEPARTMENT
OF MENTAL HYGIENE OF THE STATE OF
CALIFORNIA, APPELLANT**

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**REASONS FOR ENTERING APPEAL AS AMICUS
CURIAE**

The application of the equal protection clause by the Supreme Court of California in the case of *Department of Mental Hygiene v. Kirchner*, 388 P. (2), 720, 36 Cal. Rptr.,

488, is of such far-reaching effect that it casts a formidable shadow upon the validity of pay-patient statutes enacted by the State of Ohio and substantially all of the states fixing the responsibility between the state and certain named individuals for the cost of the care and treatment of patients in state mental institutions. The State of Ohio like that of California has designated that when financially able the patient and named relatives, i.e., husband or wife, father and/or mother, and adult children, shall bear all or a portion of the cost of care and treatment of the patient. Sections 5121.01, *et seq.*, Ohio Revised Code.

Although the Ohio statutes are not identical in language and application to those of California herein challenged, the statutes are similar in principle. Therefore, in order to preserve the right of a state legislature to determine the economic policies of the state, the responsibility of the state in providing and supporting its welfare institutions, and the responsibility of persons benefited either directly or indirectly and legally or morally responsible for the welfare of their immediate families, the State of Ohio enters this case as *amicus curiae* in support of the argument and position of the Department of Mental Hygiene of California.

ARGUMENT

As ably set forth in the argument of the Appellant, there are many sound bases for critical review of the opinion of the Supreme Court of California. For purposes of emphasis, some of the basic objections are set forth in brief herein.

The Constitutional Question Raised Herein Had Been Determined.

The California Supreme Court did not have before it for consideration and guidance the case of *Beach v. District of Columbia*, 320 F. (2d), 790, in which a federal court in 1963 upheld the validity of a statute imposing financial liability upon a father for the care and treatment of his adult daughter in a mental institution of the District of Columbia. Although this case was determined upon the due process clause of the Constitution such reasoning and conclusions are equally dispositive of this constitutional question based upon equal protection of the laws. *Bolling v. Sharpe*, 347 U.S. 497. The California court also failed to give sufficient attention to cases from other jurisdictions in which enforcement of similar statutes was challenged unsuccessfully. *People v. Hill*, 163 Ill. 186, 46 N.E., 796; *State v. Bateman*, 110 Kan. 546, 204 Pac. 682; *In Re Idleman's Commitment*, 146 Or. 13, 27 P. (2d), 305; *Rice, Guardian v. State of Ohio*, 14 Ohio App., 9.

Proper Consideration Was Not Given Prior California Cases.

The California Supreme Court did not give proper consideration to prior California cases such as *Department of Mental Hygiene v. Hawley*, 59 Cal., (2d), 247, 379 P. (2d) 22; *Department of Mental Hygiene v. McGilvery*, 50 Cal. (2d), 204, 329 P. (2d) 689; *Estate of Yturburru*, 134

Cal. 567, 66 Pac. 729; *State Commission in Lunacy v. Eldridge*, 7 Cal., App., 298, 94 Pac. 597.

Proper Consideration Was Not Given to the Benefits Inuring to the Patient and Liable Relatives.

The Court failed to properly recognize the personal benefits to the individual patient and his or her family for the custody, care, and treatment of patients in state mental institutions. Such personal benefits have been recognized by many courts as the basis for upholding the imposition of individual financial liability. The protection afforded society by the commitment of certain mentally ill persons does not override nor detract from the attendant benefits inuring to the patient and his immediate family. *Beach v. District of Columbia*, *supra*; *Commission in Lunacy v. Eldridge*, *supra*; *Estate of Yturburru*, *supra*; *In Re Idleman's Estate*, *supra*; *State v. Bateman*, *supra*; *Bon Homme County v. Berndt*, 15 S. D. 494, 90 N.W. 147; *Kough v. Hoehler*, 143 Ill. 409, 109 N.E. (2d) 177. The conclusion of the courts in these cases is supported by medical and sociological studies, some of which are set forth in the brief of the Appellant.

The Court Arbitrarily Found No Rational Basis for Classification.

The California Supreme Court arbitrarily found no rational basis for such classification. For the court to say that a family relationship with its natural and moral obligations does not provide a rational basis for classification is inconsistent with the prevailing view that state statutes in equal protection cases should be interpreted insofar as possible to be predicated upon legitimate legislative considerations. *Ferguson v. Skrupa*, 372 U.S. 726.

The burden of support imposed upon an adult child, spouse or parent for the care and treatment of a mentally ill parent, spouse or child, adult or minor, may be premised upon obligations arising out of the common law. This is supported in the argument by the Appellant. Even if such obligations are not recognized by this Court as derivative from the common law, a person has no vested interest in a particular rule of common law. *Truax v. Corrigan*, 257 U.S. 312. The legislature could therefore impose a legal duty upon an otherwise imperfect moral obligation as long as such duty is reasonable and equally applied to all persons within the class. The state has the power to determine how far and to whom the state's so-called "charity" shall be extended. *In Re Idleman's Commitment*, *supra*; *In Re Yturburru's Estate*, *supra*; *Rice, Guardian v. State of Ohio*, *supra*. The state can decide whether to extend its charity to those who are able, themselves or through their own estates, or through responsible relatives, to support themselves. The distinction between the financially helpless and those able to help themselves is a natural and reasonable one. Such distinction is basically at the foundation of the "ability to pay" philosophy which pervades our whole governmental system in so many ways. The benefits received by the patient and family and the close family relationship of a child to a parent establish sufficient bases upon which the State of California could impose financial responsibility upon adult children for the cost of the care of a mentally ill parent in a state mental institution. The California legislature in the exercise of its powers to enact the pay-patient statutes met the constitutional tests under the equal protection clause of the United States Constitution to sustain the validity of these statutes herein challenged.

The State of Ohio therefore adopts and joins in the argument of the Department of Mental Hygiene of the State of California for the reversal of the opinion of the Supreme Court of California.

Respectfully submitted,

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